

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** October 13, 2017

Thru: Bridget C. Bohac, Chief Clerk
Richard A. Hyde, P.E., Executive Director

From: Steve Hagle, P.E., Deputy Director
Office of Air

Docket No.: 2017-0866-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 114, Control of Air Pollution from Motor Vehicles
SB 1731: Light-Duty Motor Vehicle Purchase or Lease Incentive Program
Rule Project No. 2017-030-114-AI

Background and reason(s) for the rulemaking:

The Light-Duty Motor Vehicle Purchase or Lease Incentive Program (LDPLIP) was originally created by Senate Bill (SB) 5, 77th Texas Legislature, 2001, to establish a statewide incentive program for the purchase or lease of light-duty motor vehicles that met emission standards more stringent than those required by federal requirements. The Texas Comptroller of Public Accounts (TCPA) was assigned to administer the program, while the Texas Commission on Environmental Quality (commission or agency) was responsible for establishing the program criteria and rules. Although the commission adopted rules for the program, initial funding levels were insufficient for the TCPA to implement the program during the 2002-2003 fiscal biennium. In subsequent years, the legislature did not appropriate funds to the TCPA to implement the program.

In 2013, the 83rd Texas Legislature enacted SB 1727 to substantially change the LDPLIP, including transferring the responsibility for implementation to the commission and establishing new eligibility criteria to provide incentives for the purchase or lease of vehicles powered by compressed natural gas, liquefied petroleum gas, or electricity. The revised program was authorized through August 31, 2015, and funding was appropriated by the legislature for the 2014-2015 fiscal biennium. The commission adopted program rules and implemented the program through the statutory expiration date.

In 2017, the 85th Texas Legislature enacted SB 1731 re-establishing the LDPLIP under Texas Health and Safety Code (THSC), Chapter 386, Subchapter D, and including changes to the previous program criteria. A significant change included increasing the maximum incentive for a vehicle powered by compressed natural gas or liquefied petroleum gas from \$2,500 to \$5,000, while the maximum incentive for a vehicle powered by an electric drive remained at \$2,500. The bill also included language authorizing incentives for the purchase or lease of a new motor vehicle that has a dedicated or bi-fuel compressed natural gas or liquefied petroleum gas fuel system installed prior to first sale or within 500 miles of operation of the vehicle following first sale.

Scope of the rulemaking:

The proposed rulemaking would repeal and replace the rule language for the LDPLIP to incorporate the criteria established by SB 1731 under new THSC, Chapter 386, Subchapter D.

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A.) Summary of what the rulemaking will do:

The proposed rulemaking would repeal Chapter 114, Subchapter K, Division 2, §§114.610 - 114.612 and §114.616. The proposed rulemaking would replace the repealed sections with new §§114.610 - 114.613.

Proposed §114.610 would establish definitions for key words and terms used in this division. Of note are the proposed definitions included in proposed §§114.610(1) and (7) for the terms "first title" and "sell in this state." Under §114.610(1), the term "first title" would mean the initial title issued after the first retail sale of the new vehicle, with no previous title having been issued after manufacture of the vehicle. Under §114.610(2), the term "sell in this state," as applies to new vehicles, would mean where the manufacturer intends for the vehicle to be available to a purchaser in Texas and as applies to a compressed natural gas or liquefied petroleum gas system, would mean where the system may be installed on a vehicle intended to be available to a purchaser in Texas and installed prior to first retail sale of the vehicle or, if the system may be installed after first retail sale, the installation will occur in Texas. These definitions are utilized to define the eligible sale of a new light-duty vehicle in the state to include vehicles that may be purchased from a seller outside of Texas, but are issued first title in the state of Texas. As applied to conversions of new light-duty vehicles, conversions that are performed prior to the first retail sale of the vehicle are not geographically limited, whereas post-sale conversions are required to be performed in Texas. These definitions are proposed to broadly interpret the provisions of the THSC, §386.155(a), directing that reports be submitted to the commission by a manufacturer of motor vehicles, an intermediate or final state vehicle manufacturer, or a manufacturer of compressed natural gas or liquefied petroleum gas to list the new vehicle or natural gas or liquefied petroleum gas systems models that the manufacturer intends to sell in this state during that model year that meet the incentive requirements. Staff proposes to seek public comment on this interpretation of the statutory language in THSC, §386.155(a).

Under proposed §114.611, the provisions of §§114.610 - 114.613 would apply statewide, subject to availability of funding. Criteria is also proposed in this section to require that a purchase or lease of a new light-duty motor vehicle is not eligible if it is required by any state or federal law, rule or regulation, memorandum of agreement, or other legally binding document. These restrictions would not apply if, on the date the incentive is awarded, the vehicle change is not required. The restrictions would also not apply if the purchase or lease is required only by local law or regulation or by corporate or controlling board policy of a public or private entity.

Proposed §114.612 would establish eligibility requirements and other requirements for applying for and receiving an incentive. Under the proposed criteria, a purchaser or lessee of a new light-duty motor vehicle may be eligible for an incentive if the vehicle meets the eligibility requirements and is included on the list of eligible vehicles provided to the commission. By August 1 of each year this rule is in effect and appropriations are available to fund the program, the commission would publish a list of eligible vehicles on its website. This section would also include criteria for vehicle owners to receive an incentive, including criteria for vehicles with first title issued in Texas and powered by compressed natural gas or liquefied petroleum gas and electric vehicles with first title

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issued in Texas and powered by an electric motor that draws electricity from a hydrogen fuel cell or from a battery that has a capacity of not less than four kilowatt hours and is capable of being recharged from an external source of electricity.

Proposed §114.612 would also establish the eligible incentive amounts. A person who purchases or leases an eligible new light-duty motor vehicle powered by compressed natural gas or liquefied petroleum gas may be eligible to receive a \$5,000 incentive. A person who purchases or leases an eligible new light-duty motor vehicle powered by a hydrogen fuel cell or other electric drive may be eligible to receive a \$2,500 incentive. The incentive for the lease of an eligible new light-duty motor vehicle would be prorated on a three-year term. The incentive for a one-year lease would be 33.3% of the full incentive amount, a two-year lease may qualify for 66.6% of the full incentive amount, and a three-year lease may qualify for 100% of the full incentive amount.

Under proposed §114.612, an eligible vehicle must have been acquired after the date established by the commission in the application solicitation. Requirements for completion and submission of the application for an incentive would also be established in this section. Also, the criteria would require that only one incentive would be provided for each eligible vehicle purchased or leased in this state and that the incentive would go to the lessee and not the purchaser if the vehicle is purchased for the purpose of leasing the vehicle to another person.

Proposed §114.613 would establish requirements and procedures for a manufacturer of eligible new light-duty motor vehicles, an intermediate or final state manufacturer, or a manufacturer of compressed natural gas or liquefied petroleum gas systems to submit a report to the executive director in order for the executive director to compile a list of eligible vehicles and systems. The report would need to include required information on the new light-duty motor vehicle models or natural gas or liquefied petroleum gas systems, and the new light-duty motor vehicle models on which the systems are approved for installation that the manufacturer intends to sell in this state during the model year. The manufacturer would also be required to certify that the vehicle models or systems meet the eligibility standards under §114.612(a).

Under proposed §114.613, the manufacturer reports would need to be submitted to the executive director, or the executive director's designee, upon request initially and then no later than July 1 of each year preceding the new vehicle model year. A manufacturer would also be authorized to supplement the required list to include additional new light-duty motor vehicle models or compressed natural gas or liquefied petroleum gas systems the manufacturer intends to sell in this state during the model year.

B.) Scope required by federal regulations or state statutes:

The new §§114.610 - 114.613 are required to implement the provisions of the LDPLIP in THSC, Chapter 386, Subchapter D, as established by SB 1731.

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C.) Additional staff recommendations that are not required by federal rule or state statute:

Under THSC, §386.151(1), a "Light-duty motor vehicle" is defined as a motor vehicle with a gross vehicle weight rating of less than 10,000 pounds. Under THSC, §386.153(d), the commission by rule may revise the standards for the maximum unloaded vehicle weight rating and gross vehicle weight rating of an eligible vehicle to ensure that all of the vehicle weight configuration available under one general vehicle model may be eligible for an incentive.

Staff recommends a definition of "Light-duty motor vehicle" in §114.610 to include vehicles with a gross vehicle weight rating of "10,000 pounds or less." This proposed revision to the statutory standard is intended to ensure that certain general pickup truck and van models that may include a vehicle configuration rated right at 10,000 pounds would be eligible for an incentive.

Statutory authority:

The rulemaking is proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The rulemaking is also proposed under THSC, Texas Clean Air Act, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the THSC; THSC, §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; THSC, §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and THSC, Chapter 386, which establishes the Texas Emissions Reduction Plan.

The rulemaking is proposed as part of the implementation of THSC, Chapter 386, Subchapter D, as amended by SB 1731.

Effect on the:

A.) Regulated community:

This is a voluntary program. The proposed rulemaking is not anticipated to have any implications on the regulated community.

B.) Public:

Persons who purchase or lease an eligible new light-duty motor vehicle and who apply for an incentive would benefit from receiving the incentive. Automobile dealers and leasing companies that sell or lease new light-duty motor vehicles eligible for an incentive may benefit if the program encourages more persons to purchase or lease an eligible vehicle.

C.) Agency programs:

The proposed rulemaking would implement an incentive program that had ended in 2015 and is now being re-established. New program processes and materials would need to be

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developed, including application forms, manufacturer reporting forms, eligible vehicle lists, application review and approval processes, and payment processes.

Stakeholder meetings:

The commission did not hold any stakeholder meetings related to this rulemaking; however, a public hearing will be held during the comment period.

Potential controversial concerns and legislative interest:

Staff expects interest regarding the provisions that the eligible vehicles may include vehicles purchased outside of Texas, but the first title to the vehicle must be issued in Texas. Staff is aware that some light-duty electric vehicles are sold directly by the manufacturer rather than a dealer in Texas, and stakeholders have differing views regarding the eligibility of these vehicles.

Will this rulemaking affect any current policies or require development of new policies?

The proposed rulemaking would not affect current policies. New program policies and procedures would need to be developed to implement the new program.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

Implementation of the LDPLIP could not proceed without the new rules. Funding allocated for the LDPLIP would either not be used or would need to be reallocated to another program established under the Texas Emissions Reduction Plan, as authorized under THSC, §386.252.

Key points in the proposal rulemaking schedule:

Anticipated proposal date: November 1, 2017

Anticipated *Texas Register* publication date: November 17, 2017

Anticipated public hearing date (if any): December 11, 2017

Anticipated public comment period: November 17, 2017 - December 22, 2017

Anticipated adoption date: April 2018

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SB 1731

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